

SDR

301 NLRB No. 128

D--1799
Detroit, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

J & W DRYWALL CONTRACTORS, INC.,
J & W DRYWALL & PLASTERING CO., INC.,
J & W DRYWALL LATHER PLASTERING CO., INC.,
AND WILLIE WILLIAMS

and

Case 7--CA--30867

CARPENTERS FRINGE BENEFIT FUNDS

DECISION AND ORDER

By Chairman Stephens and Members Devaney and Raudabaugh
Upon a charge filed by the Carpenters Fringe Benefit Fund August 7, 1990

(subsequently amended), the General Counsel of the National Labor Relations Board issued a complaint against J & W Drywall Contractors, Inc., J & W Drywall & Plastering Co., Inc., J & W Drywall Lather Plastering Co., Inc., and Willie Williams, the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint by regular mail, the Respondents refused service by certified mail, and have failed to file an answer.

On November 13, 1990, the General Counsel filed motions to transfer case to the Board and for Default Summary Judgment. On November 20, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Regional Attorney, by letter dated October 16, 1990, notified the Respondents that unless an answer was received immediately, a Motion for Default Judgment would be filed. In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondents, Michigan corporations, are engaged in drywall installation, plastering, and lathing, at their facility in Detroit, Michigan, where during the year ending December 31, 1989, a representative period, they purchased and caused to be transported and delivered at their place of business and various jobsites within the State of Michigan goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to said place of business and jobsites in Michigan, and received from other enterprises, including Dale Enterprises, Inc., located within the State of Michigan, each of which other enterprises had received the goods and materials directly from points located outside the State of Michigan.

During the year ending December 31, 1989, a representative period, the Respondents also performed services valued in excess of \$50,000, of which services valued in excess of \$50,000 were performed in and for various enterprises, including J.C. Beal Construction, Inc., located in the State of Michigan, which enterprises annually purchased and caused to be transported and delivered at their Michigan facilities and jobsites goods and materials valued in excess of \$50,000 which were shipped directly to those facilities and jobsites from points outside the State of Michigan.

At all times material, J & W Drywall Contractors, Inc., J & W Drywall & Plastering Co., Inc., J & W Drywall Lather Plastering Co., Inc., and Willie Williams, the Respondents, have been affiliated business enterprises with common officers, ownership, management, and supervision; have formulated and administered a common labor policy affecting employees of these enterprises; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have serviced the same customers; and have held themselves out to the public and to their customers as a single-integrated business enterprise.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions, Local 512, United Brotherhood of Carpenters and Joiners of America, AFL--CIO (Local 512) and Carpenters District Council of Detroit and Southeastern Michigan (District Council) are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondents constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act: "'All journeymen and apprentice carpenters employed by the Respondents, but excluding guards and supervisors as defined in the Act.'"

The Respondents have been parties to a series of collective-bargaining agreements between the Washtenaw Contractors Association and Local 512, the most recent of which was effective by its terms from August 1, 1987, through July 31, 1990. Respondent J & W Drywall Lather Plastering Co., Inc. has also been party to an agreement with the District Council entered into on February 1, 1990, and effective through June 1, 1991. By virtue of these agreements, Local 512 and the District Council are the exclusive 9(a) representatives of the Respondents' unit employees.

These collective-bargaining agreements provide, inter alia, for certain fringe benefit contributions to be made to the Carpenters Fringe Benefit Funds by the Respondents on behalf of the unit employees. On or about September 22, 1989, and continuing to date, by letters and telephone communications, the Carpenters Fringe Benefit Funds, on behalf of Local 512 and the District Council, has requested the Respondents to make available for review their payroll records, including Forms W-2, W-3, 1099, 1096, and 941, and contribution reports for the period of May 1988 to date, so that the Carpenters Fringe Benefit Funds could audit the Respondents' compliance with the fringe benefit contribution provision of the collective-bargaining agreements.¹ The requested information is necessary for, and relevant to,

¹ The complaint here alleges that the Carpenters Fringe Benefit Funds acted on behalf of the Unions. Because this allegation is deemed admitted, we infer that the Funds were acting at the express or implied request of the Unions, and can be deemed an agent for the Unions for this limited purpose.

Local 512's and the District Council's performance of their functions as the collective-bargaining representatives of the unit employees.

Since February 8, 1990, and continuing to date, the Respondents have failed and refused to furnish the Carpenters Fringe Benefit Funds and its agents with all the requested information. By these acts and conduct, the Respondents have engaged in and are engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Conclusion of Law

By failing and refusing to provide the Carpenters Fringe Benefit Funds with certain requested information, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondents to provide the Carpenters Fringe Benefit Funds or its agents with the requested information it has failed to provide.

ORDER

The National Labor Relations Board orders that the Respondents, J & W Drywall Contractors, Inc., J & W Drywall & Plastering Co., Inc., J & W Drywall Lather Plastering Co., Inc., and Willie Williams, their officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain with Local 512, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, and the Carpenters District Council of

Detroit and Southeastern Michigan by failing and refusing to provide the Carpenters Fringe Benefit Funds with requested information necessary for the Unions to fulfill their function as bargaining representatives of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Carpenters Fringe Benefit Funds or its agents with the requested necessary information, including payroll records, Forms W-2, W-3, 1099, 1096, and 941, and contribution reports, for the period of May 1988 to date.

(b) Post at their facility in Detroit, Michigan, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'Posted by Order of the National Labor Relations Board'" shall read "'Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

Dated, Washington, D.C. February 25, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 512, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, and the Carpenters District Council of Detroit and Southeastern Michigan by failing and refusing to provide the Carpenters Fringe Benefit Funds with requested information necessary for the Unions to fulfill their function as bargaining representatives of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Carpenters Fringe Benefit Funds or its agents with the requested information, including payroll records, Forms W-2, W-3, 1099, 1096, and 941, and contribution reports, for the period of May 1988 to date.

J & W DRYWALL CONTRACTORS,
INC., J & W DRYWALL & PLASTERING
CO., INC., J & W DRYWALL LATHER
PLASTERING CO., INC., AND
WILLIE WILLIAMS

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.